

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

SOURCE VAGABOND SYSTEMS  
LTD.,

Plaintiff,

v.

HYDRAPAK, INC.,

Defendant.

---

Case No. 11-CIV-5379 (CM) (JLC)

**DECLARATION OF YORAM GILL IN  
SUPPORT OF SOURCE'S MOTION  
FOR SUMMARY JUDGMENT OF  
INFRINGEMENT**

I, Yoram Gill, declare and state:

1. I am chief executive officer of plaintiff, Source Vagabond Systems, Ltd. ("Source").
2. I make this declaration in support of Source's motion for summary judgment of infringement.
3. I have been asked to discuss the operation of Hydrapak's Reversible Reservoir II ("RR II"), as well as the invention of Source's U.S. Patent No. 7,648,276 (the "'276 Patent"), focusing on the issues raised in Hydrapak's motion for summary judgment of non-infringement.

### The '276 Patent

4. The '276 Patent discloses a sealing device for a flexible liquid container.

According to the '276 Patent abstract:

In one preferred embodiment of the invention, the sealing device comprises an elongated member with a hollow passage extending through it with a longitudinal slot, slidably mountable over a rod, which is provided over a lateral opening of a flexible liquid container. In another preferred embodiment of the present invention the rod is attached to the member extending through the passage. When the portion of the container provided with the lateral opening is folded over the rod, substantially overlapping an adjacent portion of the container and the sealer is slidably mounted over the folded portion of the container, liquid is prevented from leaking out of the container through the lateral opening. (Abstract)

5. The '276 Patent describes problems associated with sealing mechanisms

for reservoirs having an unwelded side:

Leaving an unwelded area to be used as an opening for cleaning the container brought about another problem. The ability to hermetically seal this opening when the container is in use and filled with liquid is diminished. . . (Col. 1, lines 62-65).

In all the available solutions including the above mentioned ones, the container is prone to liquid leakage. . . There is a need to provide an easy way to close the hydration container so that the container is completely sealed when in use. Moreover, when the container is safely sealed, it may be placed in any orientation without leakage. . . (Col. 2, lines 31-46).

6. The solution proposed by '276 Patent uses a rod, over which the top portion of the container is folded, and a sealer to be slidably mounted over the rod, when the container is folded over the rod:

Container 10 is folded in a way that extension 16 is wrapped over opening 14 and a fold 62 is formed. Opening 14 is fully on one side of the fold while the liquid receiving cavity is fully on the other side of the fold. Fold 62 is threaded into cylinder 52 of sealer 50 so that fold 60 is between the cylinder and rod

60. In order to establish this position, open end 56 of sealer 50 is positioned so that it wraps one side of fold 62, the rod is positioned in the interior of the fold and sealer 50 slidably proceeded towards the other side of the fold. . . (Col. 7, lines 20-28)

7. Claim 1 of the '276 Patent recites:

1. A sealable flexible liquid container system comprising:
  - a flexible liquid container having a cavity for receiving liquids, said cavity formed of two films having the majority of their perimeter fused, and a portion of the perimeter unfused so as to present a lateral opening for filling the container with liquids, and a liquid dispensing outlet;
  - a rod having a first end and a second end, fixedly attached to the container laterally across the lateral opening of the flexible container so that a portion of the container adjacent the lateral opening can be folded over the rod and substantially overlap an adjacent portion of the container; and
  - a sealer comprising an elongated rigid member having two opposite sides along which a hollow cavity is extended with a longitudinal slot wherein said slot is adapted to accommodate said two films, wherein the sealer is provided with an opening on at least one of the opposite sides with a broadening for inserting an end of the rod into the cavity when the portion of the container is folded over the rod into the hollow passage, the slot being narrower than the diameter of the rod, so that the sealer is only to be slidingly mounted sideways over the rod. (emphasis added).

8. The only aspect of claim 1 that Hydrapak challenged in its motion for summary judgment is the emphasized claim language: “the slot being narrower than the diameter of the rod.” Therefore, I have been asked to limit my declaration to this claim element.

9. The function of the sealer in claim 1 of the ‘276 patent is to hermetically close the opening of the container:

It is an object of the present invention to provide a flexible personal hydration container provided with a sealer that hermetically closes a wide opening in the container.

It is yet another object of the present invention to provide a flexible personal container provided with a sealer that safely secures and closes an opening in the container so that liquid from the container would not leak even when the container is full and even if the container is positioned with the opening in its bottom.

Yet, it is another object of the present invention to provide a flexible personal container provided with a sealer that closes a relatively wide opening that is large enough so that the opening may be used in order to fill liquid into the container and clean the container. (Col. 2, lines 54-67).

10. In operation, in order to seal the container, a portion of the container extending above the rod (when the container is held upright) is folded downward around the rod so as to overlap with a portion of the container below the rod. After folding the top of the container over the rod, the open end of the sealer is slidably mounted over the rod:

Container 10 is folded in a way that extension 16 is wrapped over opening 14 and a fold 62 is formed. Opening 14 is fully on one side of the fold while the liquid receiving cavity is fully on the other side of the fold. Fold 62 is threaded into cylinder 52 of sealer 50 so that fold 60 is between the cylinder and rod 60. In order to establish this position, open end 56 of sealer 50 is positioned so that it wraps one side of fold 62, the rod is positioned in the interior of the fold and sealer 50 slidably

proceeded towards the other side of the fold. (Col. 7, lines 20-28)

\* \* \*

In order to seal container 100, extension 104 is wrapped over rod 114 and elongated member 118 is slidably mounted over rod 114 and the wrap. As mentioned herein before, elongated member 118 is mounted over the rod by sliding the rod and wrap into the cavity of elongated member 118 from one of its sides. . . In order to slidably mount elongated member 118 onto rod 114, lateral protrusion 122 is threaded into the interior of elongated member 118 through an opening 126 in the member. Elongated member 118 can be mounted on rod 114 only through the end provided with lateral protrusion 122. . . (Col. 8, lines 52-64)

11. The way in which the sealer operates is by slidably mounting the sealer over the rod when the top of the container is folded over the rod. More specifically, the combination of the rod and the folder-over portion of the container is thicker than longitudinal slot of the sealer, so as to prevent the sealer from being attached to the bag by forcing the folded top of the container (including the rod) into the narrow slot.

In a preferred embodiment of the present invention the space defined within the passage in the sealer is not smaller than the total space occupied by the portion of the container provided with the lateral opening folded over the rod and the rod itself when inserted in the passage, and the slot is not narrower than the total thickness of the folded portion of the container and the adjacent portion when inserted through the slot. (Col. 8, line 66 – Col. 9, line 6)

12. In embodiments of the invention described in the '276 Patent specification, when the container is folded over the rod, the point of maximum thickness is at the rod-plus-folded over container:

The rod's diameter is too large so as to be pulled out through the slot along the internal cavity of the elongated member. (Col. 8, lines 44-46).

13. As described, the slot in the sealer is narrower than the thickness of the top of the container folded around the rod, measured at the point of maximum thickness:

An example for optimized sizes of a container and a corresponding sealer are: for a container having thickness of approximately 0.9 mm (the thickness of the two films), a sealer having a slot of about 3 mm, a rod of about 3 mm in diameter and an inner passage diameter of about 11.5 mm will adapt to sealingly block the passage of liquid from the liquid receiving cavity through the fold while at the same time the insertion of the fold into the cylinder is easy. (Col. 7, line 64 – Col. 8, line 5)

14. Due to the fact that the slot is narrower than the point of maximum thickness of the container folded over the rod, the sealer can only be slidingly mounted sideways over the rod:

Sealer 50 can not be removed from the fold unless it slides in an opposite direction to the direction it has been put on. . . . (Col. 7, lines 33-35)

15. The result of the above is that the container is only to be closed by slidingly mounting the sealer over the rod, thereby allowing it to be used repeatedly to seal the container without deforming the sealer, which deformation would eventually allow leakage into the container:

It is a further object of the present invention to provide a container provided with a sealer that is durable in extensive out-door activity. (Col. 3, lines 1-3)

The unique seal of the present invention is adapted to hermetically seal personal hydration containers having an opening that is relatively large so as to enable easy filling and easy cleaning of the container through the opening. The seal prevents leakage of liquid from the container, no matter what the orientation of the container is. Therefore, the container may be positioned in any orientation as well as on its side without leakage. (Col. 6, lines 18-25)

## **The Reversible Reservoir II**

16. I assume for purpose of this declaration that the measurements provided in Hydrapak's declarations and the attached materials are accurate.

17. The RR II (including the container and the sealer) is a sealable flexible liquid container system that includes a flexible liquid container (the reservoir bag) and a sealer (referred to in Hydrapak's papers as a "slider"). The container has attached to it a rod (referred to in Hydrapak's papers as a "lip bulge") across the opening at the top of the container. The sealer of the RR II has a hollow cavity and a slot.

18. The function of the sealer is to hermetically close the opening of the container.

19. In order to seal the RR II, a portion of the container extending above the rod (when the container is held upright) is folded downward around the rod so as to overlap with a portion of the container below the rod. After folding the top of the container over the rod, the open end of the sealer is slidingly mounted over the rod.

20. The way in which the sealer operates is by slidingly mounting the sealer over the rod when the top of the container is folded over the rod. More specifically, the catches add thickness to the folded top of the container, so as to prevent the sealer from being attached to the bag by forcing the folded top of the container (including the rod and the catches) into the narrow slot.

21. When the container is folded over the rod, the point of maximum thickness is at the catches. The thickness at this point is at least twice the thickness of the catches, plus four times the thickness of the film, plus the thickness of the inner plastic lip.



22. According to the numbers provided by Hydrapak, this point of maximum thickness is at least 8.0mm ( $2 \times 3\text{mm} + 4 \times 0.25\text{mm} + 1\text{mm}$ ) or 8.6mm ( $2 \times 3\text{mm} + 4 \times 0.4\text{mm} + 1\text{mm}$ ). The width of the slot is 4.2mm or 4.8mm.

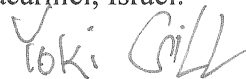
23. The slot is narrower than the thickness of the top of the container folded around the rod, measured at the point of maximum thickness, i.e., at the catches.

24. Due to the fact that the slot (4.2mm or 4.8mm) is narrower than the point of maximum thickness of the container folded over the rod (8mm or 8.6mm), the sealer can only be slidingly mounted sideways over the rod.

25. The result of the above is that the container is only to be closed by slidingly mounting the sealer over the rod, thereby allowing it to be used repeatedly to seal the container without deforming the sealer, which deformation would eventually allow leakage into the container.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 23, 2011, in Tirat Hacarmel, Israel.



---

Yoram Gill